

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1923 & 1924/PUN/2024
निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

Shri Chhatrapati Sahakari Sakhar Karkhana Ltd., A/p. Bhavaninagar, Tal. Indapur, Dist. Pune- 413104. PAN : AAAAS3869G	Vs.	DCIT, Circle-14, Pune.
Appellant		Respondent

Assessee by : Shri Hanmant D. Dhavale
Revenue by : Shri Ramnath P. Murkunde

Date of hearing : 20.02.2025
Date of pronouncement : 19.05.2025

आदेश / ORDER

PER VINAY BHAMORE, JM:

Both the above captioned appeals filed by the assessee are directed against the separate orders dated 07.08.2024 passed by Ld. CIT(A)/NFAC for the assessment years 2008-09 and 2009-10 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals of the assessee, we proceed to dispose of the same by this common order.

3. First, we shall take up the appeal of the assessee in ITA No.1923/PUN/2024 for assessment year 2008-09 as a lead case for adjudication.

ITA No.1923/PUN/2024, A.Y. 2008-09 :

4. The appellant has raised the following grounds of appeal :-

“1. On the fact and in the circumstance of the case and in law of the learned NFAC – Commissioner of Income Tax (Appeals) Delhi, has erred in disallowing and adding back an amount of Rs.12,84,77,005/- on account of Excess Cane price paid to members.

2. On the fact and in the circumstances of the case and in law of the learned NFAC – Commissioner of Income Tax (Appeals) Delhi, has erred in disallowing and adding back an amount of Rs.7,41,159/- on account of Sale of Sugar at Concessional Rate.

The appellant craves for the leave, add, alter, amend, modify and delete any or all the above grounds of appeals before or at the time of the hearing.”

5. Facts of the case, in brief, are that the assessee is an AOP engaged in the business of manufacturing of sugar and crushing of can and has furnished its original return of income on 26.09.2008 and revised return of income on 28.09.2009 declaring total income

of Rs.Nil. The assessment was completed u/s 143(3) of the IT Act on 24.12.2010 by determining total income at Rs.17,86,86,830/- after making various disallowances/additions including on account of excessive sugarcane purchase price Rs.12,84,77,005/- and sale of sugar at concessional rate Rs.7,41,159/-. The above assessment order was challenged before Ld. CIT(A) and then before Coordinate Bench of this Tribunal wherein the Tribunal set-aside the issue back to the file of Assessing Officer to decide the issue afresh. The assessment order was passed u/s 143(3) r.w.s. 254 of the IT Act by sustaining the addition Rs.12,84,77,005/- on account of excessive sugarcane purchase price and also an addition of Rs.7,41,159/- on account of sale of sugar at concessional rate.

6. After considering the reply of the assessee, Ld. CIT(A)/NFAC observed that in the light of section 155(19) of the IT Act and also in the light of CBDT Circular No.18/2021 dated 25.10.2021, the assessee is required to file an application u/s 154 of the IT Act which shall be considered by the Assessing Officer and appropriate order will be passed by the Assessing Officer with regard to allowance of so-called excessive sugarcane purchase price.

Accordingly, ground no.1 raised by the assessee was allowed for statistical purposes. Regarding addition of Rs.7,41,159/- with regard to sale of sugar at concessional rate, Ld. CIT(A)/NFAC dismissed the said ground raised by the assessee. It is this order against which the assessee is in appeal before this Tribunal.

7. Ld. AR appearing from the side of the assessee submitted before the Bench that the issue of allowance of excessive sugarcane purchase price has been settled by insertion of section 155(19) of the IT Act wherein the assessee is required to file an application under section 154 of the IT Act before the Assessing Officer to claim the benefit of sugarcane purchase price paid over SMP (Statutory Minimum Price) & FRP (Fair & Remunerative Price) in comparison to SAP (State Advised Price). Accordingly, Ld. AR requested before the Bench to set-aside the order passed by Ld. CIT(A)/NFAC on this issue and further requested to remand the matter back to the Assessing Officer to decide the issue in the light of section 155(19) of the IT Act and the circular issued by CBDT in this regard since the assessee has already filed an application u/s

154 of the IT Act which is still pending before the Assessing Officer.

8. With regard to the second ground of appeal, Ld. AR submitted before the Bench that the sugar at concessional price was sold to the members as per prevailing customs throughout the state of Maharashtra and accordingly prayed to delete the addition made by the Assessing Officer and sustained by the Ld. CIT(A)/NFAC appeal in this regard.

9. Ld. DR appearing from the side of the Revenue relied on the orders passed by the subordinate authorities and requested to confirm the same.

10. We have heard Ld. counsels from both the sides and perused the material available on record. In this regard, we find that Ld. CIT(A)/NFAC with regard to ground no.1 i.e. disallowance of Rs.12,84,77,005/- on account of excess purchase price paid by the assessee has simply directed the assessee to file an application u/s 154 of the IT Act in the light of section 155(19) of the IT Act and also in the light of CBDT Circular No.18 of 2021 dated 25.10.2021 and allowed the ground for statistical purposes. Accordingly, we do

not find any error in the order passed by Ld. CIT(A)/NFAC with regard to above issue, however we deem it appropriate to remand the matter back to the file of the Assessing Officer to decide the issue afresh in the light of application already filed by the assessee under section 154 of the IT Act with regard to allowance of excess purchase price paid in comparison to SMP/FRP fixed by the Central Govt. over SAP fixed by the Maharashtra State Govt. Accordingly, ground no.1 raised by the assessee is partly allowed.

11. With regard to ground no.2, we find that Coordinate Bench of this Tribunal set-aside the order passed by the Assessing Officer and Ld. CIT(A)/NFAC and remanded the matter back to the file of the Assessing Officer to decide the issue of disallowance on account of sale of sugar at concessional rate to its members, afresh, on the basis of directions given by Hon'ble Supreme Court in the case of CIT vs. Krishna Sahakari Sakhar Karkhana Ltd [2012] 27 taxmann.com 162/211 taxman.com 109 (SC). Since the assessee did not furnish any details, the Assessing Officer, due to paucity of time, could not wait for the reply of the assessee and therefore in the absence of any details furnished by the assessee with regard to the

disallowance on account of sale of sugar at concessional rates to members made the same addition on the basis of original assessment order wherein Rs.7,41,159/- was disallowed on account of sale of sugar at concessional rates to members. We further find that Ld. CIT(A)/NFAC also confirmed the addition since the assessee could not furnish any details as directed by Hon'ble Supreme Court in the case of CIT vs. Krishna Sahakari Sakhar Karkhana Ltd (supra). In this regard, we find that assessee was required to furnish various details including whether it is customary to sale at concessional rates to its members, and whether any direction given by the respective state regarding sale of sugar at concessional rate to its members, however no such details were furnished either before the Assessing Officer or before Ld. CIT(A)/NFAC. Considering the totality of the facts of the case and in the interest of justice and without going into merits of the case, since we have already remanded the matter with respect to ground no.1 back to the file of the Assessing Officer to decide the issue afresh, we also deem it appropriate to set-aside the order passed by Ld. CIT(A)/NFAC on the issue of ground no.2 and remand the

matter back to the file of the Assessing Officer to decide the issue afresh as per fact & law in the light of directions issued by Hon'ble Supreme Court in the case of CIT vs. Krishna Sahakari Sakhar Karkhana Ltd (supra) after providing reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to respond to the notices issued by the Assessing Officer in this regard and produce relevant documents, explanations, submissions and evidences in support of its contentions without taking any adjournment under any pretext, otherwise the Assessing Officer shall be at liberty to pass appropriate orders as per law. Thus, the ground no.2 raised by the assessee is partly allowed.

12. In the result, the appeal filed by the assessee in ITA No.1923/PUN/2024 for A.Y. 2008-09 is allowed for statistical purposes.

ITA No.1924/PUN/2024, A.Y. 2009-10 :

13. Since the facts and issues involved in the appeal of the assessee for the assessment year 2009-10 are identical to the facts of the case for assessment year 2008-09, therefore, our decision in ITA No.1923/PUN/2024 for A.Y. 2008-09 shall apply *mutatis mutandis*

to this appeal of the assessee in ITA No.1924/PUN/2024 for A.Y. 2009-10. Accordingly, the appeal of the assessee in ITA No.1924/PUN/2024 for A.Y. 2009-10 is also allowed for statistical purposes.

14. To sum up, both the above captioned appeals of the assessee are allowed for statistical purposes.

Order pronounced on this 19th day of May, 2025.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th May, 2025.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.